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6 Attorneys for Plaintiffs
 7 DANIEL T. SHANKS, ROBERT G. MERRITT,
 JOHN ALEXANDER WEBBER AND
 JOSE ONASSIS NOVICIO TAGUNICAR

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10 UNITED STATES DISTRICT COURT
 11 NORTHERN DISTRICT OF CALIFORNIA
 12 SAN FRANCISCO DIVISION – ECF PROGRAM

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15 DANIEL T. SHANKS,
 16 Plaintiff,
 v.
 18 WASHINGTON MUTUAL, INC., and
 19 DOES 1-10, inclusive,
 Defendants.

CASE NO. CV-08-03694 SC;
 ADMINISTRATIVE MOTION TO
 CONSIDER WHETHER CASES
 SHOULD BE RELATED;
 DECLARATION OF KYMBERLY E.
 SPEER; PROPOSED ORDER
(LOCAL RULE 7-11)

22 ROBERT G. MERRITT,
 23 Plaintiff,
 v.
 25 WASHINGTON MUTUAL, INC., and
 26 DOES 1-10, inclusive,
 Defendants.

CASE NO. CV-08-03693 JCS;

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&
Markowitz
L.L.P.

1 JOHN ALEXANDER WEBBER,
 2 Plaintiff,
 3
 4 v.
 5 WASHINGTON MUTUAL, INC. and
 6 DOES 1-10, inclusive,
 7 Defendants.

CASE NO. CV-08-03692 SBA

8 JOSE ONASSIS NOVICIO TAGUNICAR,
 9 Plaintiff,
 10 v.
 11 WASHINGTON MUTUAL, INC., and
 12 DOES 1-10, inclusive,
 13 Defendants.

CASE NO. CV-08-03691 JL

14
**ADMINISTRATIVE MOTION TO CONSIDER
 WHETHER CASES SHOULD BE RELATED**

15 Plaintiffs Daniel Shanks, Robert G. Merritt, John Alexander Webber and Jose Onassis
 16 Novicio Tagunicar hereby move the Court for an order finding that the cases captioned above are
 17 related. This motion is brought in each of the actions captioned above. The grounds for the
 18 motion are as follows:
 19

20 • All four actions concern substantially the same parties, property, transaction or
 21 event: Plaintiffs Shanks, Webber, Merritt and Tegunicar are former executives with defendant
 22 Washington Mutual, Inc. (“WaMu”). Their employment with WaMu was subject to substantially
 23 identical “Change in Control” agreements (“CIC”) governing payments to which the plaintiffs
 24 were entitled upon termination of their employment for reasons other than “for cause” or
 25 “disability.” All four plaintiffs allege that WaMu failed to properly calculate and pay them the
 26 sums due under their respective CICs. See “Notice of Related Actions” filed by plaintiff Daniel
 27 Shanks in Case No. CV-08-03694 SC on August 7, 2008, and attached to this motion as Exhibit A.
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1 • Given that four different judges have been assigned to these cases, it appears likely
 2 that there will be an unduly burdensome duplication of labor and expense or conflicting results if
 3 the cases are conducted before different judges.

4 • Of the four actions captioned above, the case filed by plaintiff Daniel Shanks (Case
 5 No. CV-08-03694 SC) has been assigned the most recent case number. Accordingly, under Local
 6 Rule 3-12(b), the Shanks action should become the "lead" case if the four actions are deemed
 7 related.

8 Plaintiffs have not obtained a stipulation to relate these matters because defendant WaMu
 9 was only recently served and has not yet appeared in this action on any of the four cases.
 10 Nevertheless, plaintiffs submit that an order to relate the four actions is appropriate at this time.
 11 Having the four actions related under Rule 3-12 will avoid duplication of effort and associated
 12 cost savings at the earliest opportunity.

13 For the foregoing reasons, plaintiffs respectfully request that this Administrative Motion be
 14 granted.

15
 16 DATED: August 25, 2008

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 18 By: 

19 STEPHAN E. KYLE
 20 KIMBERLY E. SPEER
 21 Attorneys for Plaintiffs
 22 DANIEL T. SHANKS, ROBERT G.
 23 MERRITT, JOHN ALEXANDER
 24 WEBBER AND JOSE ONASSIS
 25 NOVICIO TAGUNICAR

DECLARATION OF KYMBERLY E. SPEER

I, Kymberly E. Speer, declare:

1. I am a partner in Kenney & Markowitz, LLP, counsel of record for each of the four plaintiffs in the actions captioned above.

2. The four actions that are the subject of this motion are substantially identical factually and legally. The individual "Change in Control" agreements on which each action is based have substantially identical terms. The four cases differ only in the value of the components of individual compensation that should have been used to calculate the plaintiffs' severance payments under the formula common to all of the CICs.

3. This is a diversity action. WaMu was served with all four complaints under California rules (CCP 415.40) by mailing copies of each summons/complaint to Stephen J. Rotella, President, Washington Mutual, Inc., by first class, certified mail, return receipt requested. The returned receipt reflects that the service package was received and acknowledged on August 12, 2008. Service of process on WaMu therefore was complete as of August 22, 2008, under CCP 415.40. WaMu has not yet responded to any of the Complaints, nor has WaMu responded to the pre-lawsuit correspondence sent by this office.

4. Attached to this declaration is a true and correct copy of the "Notice of Related Actions" filed by plaintiff Daniel Shanks in Case No. CV-08-03694 SC on August 7, 2008.

I have personal knowledge of the foregoing facts and, if called as a witness, would competently testify to their truth. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this Declaration was executed August 25, 2008 at San Francisco, California.

Kymberly E. Speer

ORDER

Good cause appearing therefore, IT IS HEREBY ORDERED that the following four cases:

Shanks v. Washington Mutual, Inc., Case No. CV-08-03694 SC

Merritt v. Washington Mutual, Inc., Case No. CV-08-03693 JCS

Webber v. Washington Mutual, Inc., Case No. CV-08-03692 SBA

Tagunicar v. Washington Mutual, Inc., Case No. CV-08-03691 JL

are deemed related as defined by Civil L.R. 3-12(b). Pursuant to Civil L.R. 3-12(e), the Clerk of Court is ordered to reassign the later-filed action to the undersigned. Counsel are instructed that all future filings are to bear the initials SC immediately after the case number.

Dated:

UNITED STATES DISTRICT COURT

**Kenney
&
Markowitz
L.L.P.**

EXHIBIT “A”

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13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 SAN FRANCISCO DIVISION – E-FILING

16 DANIEL T. SHANKS,

17 CASE NO. CV-08-03694 SC

18 Plaintiff,
19
20 v.
21 WASHINGTON MUTUAL, INC. and Does
22 1-10, inclusive,
23 Defendants.

NOTICE OF RELATED CASES

24
25
26 TO THE CLERK OF THE ABOVE-ENTITLED COURT AND TO PLAINTIFF AND HIS
27 ATTORNEYS OF RECORD:

28 PLEASE TAKE NOTICE that pursuant to Northern District Local Rule 3-12(b), this
action is related to Case Nos. C 08-03693 JCS, C 08-03692 SBA and C 08-03691 JL, United
States District Court, Northern District of California.

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30
31 **RELEVANT FACTS**

32 Plaintiff Daniel T. Shanks formerly was an executive with Providian Bancorp Services.
33 His employment with the company was subject to a "Change in Control" agreement ("CIC")

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1 which specified that, in the event Providian's ownership changed and plaintiff's employment was
2 terminated for reasons other than "for cause" or "disability," plaintiff would be entitled to certain
3 payments. In due course Providian was merged with and into defendant Washington Mutual.
4 Thereafter, plaintiff's employment terminated and triggered the severance payment provisions of
5 the CIC. Plaintiff's lawsuit in this Court alleges that defendant failed to properly calculate and
6 pay him the sums due under the CIC during his employment with and after his termination from
7 Washington Mutual.

8 The plaintiffs in the related cases listed above are John Alexander Webber (Case No. 08-
9 CV-3692 SBA), Jose Onassis Novicio Tagunicar (Case No. 08-CV-3691 JL), and Robert G.
10 Merritt (Case No. 08-CV-3693 JCS.) These plaintiffs, like plaintiff Shanks, were executives at
11 Providian who entered into substantially identical CIC agreements and, during their employment
12 with and after their termination from successor Washington Mutual, were underpaid in violation
13 of their individual CICs.

14

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GROUND FOR NOTICE OF RELATED CASE

16 All of these cases arise from underlying contracts that substantively are the same; plaintiffs
17 allege the same types of damages (underpayment of sums due under substantively identical
18 "Change in Control" agreements); and all cases involve the same defendant (Washington Mutual)
19 and no others other than unspecified fictitiously-named defendants.

20

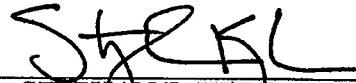
21 DATED: August 3, 2008

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By:


STEPHAN E. KYLE
KYMBERLY E. SPEER
Attorneys for Plaintiff
DANIEL T. SHANKS

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